

## **In Response to the Appeal Brief**

The present decision represents the Examiner's response to the Appeal Brief, filed on September 09, 2009.

### ***DETAILED ACTION***

#### ***Claims Status***

Claims 21-33 are currently pending in the Instant Application.

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

**In claim 27, line 1, please delete "1" and replace it with - -21- -**

**In claim 28, line 1, please delete "11" and replace it with - -21- -**

**In claim 28, line 2, please delete "system" and replace it with - -device- -**

**In claim 33, line 1, please delete "1" and replace it with - -21- -**

**In claim 33, line 1, after "said", please insert - -watermark- -**

### **Reason For Allowance**

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Applicant argues that the rejection of claim 29, based on Section 101, **is barred by res judicata** since the exact same rejection has already been reversed by the Board of Appeals and that decision is now final and thus, re-raising the matter is deemed inappropriate. Moreover, continues the Applicant, the M.P.E.P. does not authorize re-raising non-prior art issues after one, much less two, reversals by the Board of Appeals. Further, with respect to the art rejection of the claims using Rodriguez, Applicant submits that the rejection is null and void since the Board of Appeals had examined the Rodriguez's reference and had concluded that the reference does not anticipate the claims and that the only basis for raising new rejections is to find a new reference (M.P.E.P. § 1214.04).

Here, the Office, in response to the Applicant's Appeal Brief and Petition, seems to agree with the Applicant's remarks. Therefore, and in view of the above, the claims are allowed based on the Board's Decision in conjunction with the Applicant's response.

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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**USP 7,076,432 to Cheah** discloses an apparatus and a method for processing encoded digital audio data, wherein the digital audio data is encoded using one of a plurality of encoding formats. The present invention prevents encoded digital audio data that has been copied onto a particular type of data storage medium having a unique identifier, such as a compact-flash memory card, from another one of the particular type of data storage medium from being playable in an audio playback device according to the present invention. In accordance with the present invention, an encoded audio data file is encrypted using a unique identifier associated with the data storage device and a second key, an associated decoder file is encrypted using a first key, and the encrypted data and decoder files are stored onto the data storage device. During playback, a digital signal processor decrypt the audio data file in response to the second key and decrypts the decoder file in response to the first key. Advantageously, the second key is generated in response to the unique identifier and a third key. This method of encrypting and playing back the audio data files stored in the data storage device prevents an apparatus according to the present invention from playing back audio data files from a particular type of data storage device having a unique identifier, when the audio data files have been copied from another one of the same type of data storage device (See abstract).

Further, Harrison, Ann describes in an article, “**ARIS says it's on key with digital watermark**”, that the recording industry will first adopt a watermark standard for music delivered via an analog signal and then work with software vendors to develop a watermark technology for the digital domain. Watermarks on analog music played over the radio would help track artists' royalties. Special receivers could record broadcast and allow artist rights organizations to compile music play list statistics for royalty collection. The next generation of

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radio receivers will also be able to display text from embedded watermark information. This would allow record companies to encode each track of music with information such as the name of the song, artist, album, record label, liner notes and lyrics. Since consumers are more likely to purchase music they can identify by name, record companies hope that watermarks will help boost record sales.

Additionally, a BALTIMORE MORNING SUN ( BS ) article, **ADD A TOUCH OF CLASS TO PRINTED DOCUMENTS**, talked about a simulated watermarking technique- Atmospheres is a collection of images that can be superimposed over an entire page or any part of a page. The images can add style, even a touch of class, to your everyday printed documents. A clever utility program appropriately named "Watermark" makes it all work. There are five collections: Patterns, Geometries, Classics, CityScapes and Habitats are fairly self-descriptive and contain 15 different scenes each. The Watermark program allows you to print any picture as a transparent image. Atmospheres' images blend unobtrusively into the background. Using the "gray-scale" capability of most printers, you can choose how light or dark you want the image to appear on the page.

3Any inquiry concerning this communication from the Examiner should be directed to Jean D. Janvier, whose telephone number is (571) 272-6719. The aforementioned can normally be reached Monday-Thursday from 10:00AM to 6:00 PM EST. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Ms. Lynda Jasmin, can be reached at (571)272-6782

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/Jean Janvier/

Primary Examiner, Art Unit 3688